

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

**CASE NO.**

EDWIN MOISES AGUIRRE POLANCO,

Petitioner,

v.

WARDEN, FLORIDA SOFT SIDE FACILITY  
SOUTH, GARRETT J. RIPA, Miami Field Office  
Director, Immigration and Customs Enforcement and  
Removal Operations; TODD M. LYONS, Acting  
Director of Immigration Customs Enforcement;  
KRISTI NOEM, Secretary of the Department of  
Homeland Security; PAMELA BONDI, Attorney  
General of the United States, in their official  
capacities,

Respondents.

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**VERIFIED PETITION OF WRIT OF HABEAS UNDER 28 U.S.C. § 2241**

**INTRODUCTION**

1. Petitioner Edwin Moises Aguirre Polanco seeks immediate relief from ongoing and unlawful civil immigration detention. He entered without inspection in February 2009 and was not apprehended upon entry.

2. ICE now refuses release and the Immigration Court takes the position that it lacks jurisdiction to redetermine custody under the Board of Immigration Appeals' (BIA) precedential decision in *Matter of Yajure Hurtado*, which holds that Immigration Judges have no bond jurisdiction over noncitizens "present in the United States without admission" detained under Immigration and Nationality Act ("INA") § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). 29 I&N Dec. 216 (BIA 2025).

3. This case presents a pure question of law regarding whether Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A), which mandates detention for noncitizens "seeking admission" at ports of entry, or by 8 U.S.C. § 1226(a), which provides discretionary detention with bond hearings for noncitizens already present in the United States.

4. Petitioner was apprehended by law enforcement on March 11, 2026. Petitioner was detained pursuant to a traffic stop wherein law enforcement utilized a license plate reader to determine that Petitioner had no valid driver license. It is unknown whether local, state, or federal law enforcement apprehended Petitioner. Petitioner was ultimately transported to Florida South Side Facility South where he is currently detained. To date, Petitioner has not been served with a Notice to Appear charging him with inadmissibility. As such, removal proceedings have not been commenced against Petitioner.

5. Accordingly, Petitioner respectfully requests that this Court expeditiously grant him a Writ of Habeas Corpus and order his immediate release from unlawful detention. Petitioner contends that immediate release is the only mechanism to protect Petitioner's procedural due process rights, as evidence shows that immigration courts have routinely pre-determined that individuals similarly-situated to Petitioner are a "danger to the community" or "flight risk" in order to deny bond.<sup>1</sup> See Exhibit A. Alternatively, Petitioner requests that this Court order a bond hearing before an Immigration Judge ("IJ") where DHS bears the burden of justifying his continued detention.

#### **JURISDICTION AND VENUE**

6. Petitioner is in the physical custody of Respondents and is currently detained at Florida Soft Side Facility South, a federal detention facility located in Ochopee, Florida.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution and laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1331, federal question and the Suspension Clause of the United States Constitution which preserves habeas to challenge unlawful executive detention, Article I, Section 9, Clause 2.

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<sup>1</sup> That is, individuals who are beneficiaries of habeas relief grants based on the same legal theory.

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. 8 U.S.C. §1252(g) does not deprive this Court of jurisdiction because Petitioner is not seeking review of the three discrete actions that the Attorney General may take under § 1252(g). *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Rather, Petitioner seeks the Court's determination on the appropriate legal authority governing his detention, and consequently whether he may be released or afforded a bond hearing.

10. Under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in the Middle District of Florida, which is the judicial district where Petitioner is currently detained. Venue is also proper in this District under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

#### **REQUIREMENTS OF 28 U.S.C. § 2243**

11. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).



### EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. There is no statutory exhaustion requirement for habeas challenges under 28 U.S.C. § 2241. In the absence of a statutory exhaustion requirement, “sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

14. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because the BIA recently issued a precedential decision holding that anyone who has entered the United States without inspection is considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under Section 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, 2025 WL 3041895, 2025 WL 3041895 at \*3 (M.D. Fla. Oct. 31, 2025) (Polster Chappell, J.) (noting that the BIA’s decision in *Yajure Hurtado* renders exhaustion futile); *Cetino v. Hardin*, No. 2:25-cv-1037-JES-DNF, 2025 WL 3558138, 2025 WL 3558138 at \*2 (M.D. Fla. Dec. 12, 2025) (Steele, J.) (noting that “Petitioners need not exhaust administrative remedies if the administrative body is shown to be biased or has otherwise predetermined the issue before it.”) (internal quotations omitted).

### PARTIES

15. Petitioner Edwin Moises Aguirre Polanco is a native and citizen of Honduras. He first entered the United States in February 2009 and has resided here continuously since that time. ICE detained Petitioner on March 11, 2026, and he remains in custody at Florida South Side Facility South. Petitioner is in custody and under the direct control of Respondents and their agents.

16. Respondent Warden is sued in his or her official capacity as the Facility Administrator of the Florida South Side Facility, where Petitioner is detained. He or she is the immediate physical custodian of Petitioner. At the time of filing, the Warden’s name is not publicly known.

17. Respondent Garrett J. Ripa is sued in his official capacity as the Field Office Director for the Miami Field Office of Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations. The Miami Field Office is responsible for custody and enforcement decisions concerning non-citizens within its jurisdiction, including their arrest, detention, and custody status. The Miami Field Office’s area of responsibility includes the State of Florida and parts of the Caribbean region. Respondent Ripa is the immediate custodian of Petitioner and responsible for his detention and removal.

18. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of ICE and has authority over the operations and actions of ICE, including those of Respondent Ripa, the Field Office Director for the Miami Field Office. Respondent Lyons exercises supervisory authority over ICE detention facilities nationwide and is therefore the legal custodian of Petitioner.

19. Respondent Kristi Noem is sued in her official capacity as the Secretary of the Department of Homeland Security (“DHS”) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is charged with faithfully administering the immigration laws of the United States and is a legal custodian of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States, and as such has authority over the Executive Office of Immigration Review which is a component of the Department of Justice that is responsible for implementing and enforcing the immigration laws of the United States in removal proceedings, including custody redetermination in bond hearings.

#### **FACTUAL BACKGROUND**

21. Petitioner entered the United States in February 2009. He entered the United States between ports of entry and was not apprehended by immigration officials. Petitioner has

remained in the United States for over 17 years, establishing deep roots and family ties. He has three United States citizen children. Petitioner's two youngest children are 2-year-old twins with serious medical conditions. One of the twins suffers from seizures and has been referred to a neurologist. The other twin suffers from heart problems and has been referred to a cardiologist. Other than one minor traffic offense, Petitioner has no criminal record. Petitioner has stable work, pays his federal income taxes, and owns a home in Central Florida where he and his family reside. Respondents detained Petitioner during a traffic stop. Petitioner has not been served with a Noticed to Appear charging him with inadmissibility under 8 U.S.C. § 1182. Removal proceedings have not been commenced against Petitioner.

22. Respondents now wish to deny Petitioner due process based on the entry-fiction that the Petitioner is "seeking admission" and therefore an "applicant for admission" despite his lengthy presence in the United States.

23. This Court and others have routinely found that the entry-fiction of "seeking admission" does not extend to noncitizens present in the United States for months or even years. *See, e.g., Garcia*, 2025 WL 3041895 at \*3. (Polster Chappell, J.); *Cetino*, 2025 WL 3558138 at \*2 (Steele, J.); *see also Puga v. Assistant Field Office Dir.*, No. 25-24535-CIV, 2025 U.S. Dist. LEXIS 203222, at \*13 (S.D. Fla. Oct. 15, 2025) (Altonaga, J.); *Diaz Martinez v. Hyde*, --- F. Supp. 3d ---, No. 1:25-cv-11613-BEM (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937 (S.D.N.Y. Aug. 8, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass. July 7, 2025); *Ceja Gonzalez v. Noem*, No 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-03142- SRN-SGE (D. Minn. Aug. 15, 2025); *Make the Road N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020).

24. Petitioner's recent detention on this basis violates the plain text of the INA, and is contrary to the statutory framework.



### LEGAL FRAMEWORK

25. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

26. 8 U.S.C. § 1226(a), authorizes the arrest, detention, and release (on bond or conditional parole) of noncitizens pending a decision on removal, except for classes of individuals with certain criminal history who are covered by § 1226(c).

27. 8 U.S.C. § 1225(b) generally mandates detention of noncitizens subject to expedited removal and recent arrivals seeking admission. There is an express exception that grants DHS limited parole authority to release an individual subject to mandatory detention for urgent humanitarian reasons or significant public benefit. 8 U.S.C. § 1182(d)(5). The Supreme Court in *Jennings* explained “[t]hat express exception to detention [set forth in § 1182(d)(5)(A)] implies that there are no other circumstances under which aliens detained under § 1225(b) may be released.” *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

28. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

29. The text of § 1226 explicitly applies to individuals “already in the country pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289. Section 1226 also includes individuals charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such individuals makes clear that, by default, they are afforded a bond hearing under subsection (a). “When Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

30. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. By default, this provision applies to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. §1226(a). These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of an alien.” *Id.* § 1229a.

31. Despite the long-established statutory construction of Sections 1225 and 1226, and Respondents’ own historical practice of providing bond hearings to noncitizens like Petitioner residing in the country, ICE reversed course in July 2025 and began asserting that all individuals present in the United States without inspection should be considered “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A) without a bond hearing.

32. On September 5, 2025, the BIA issued a binding decision adopting ICE’s interpretation. *Matter of Yajure Hurtado* strips Immigration Courts of jurisdiction to hold bond hearings for any noncitizen present in the United States without inspection, regardless of how long they have resided in the United States or where ICE encountered them within the country. 29 I&N Dec. at 216, 229.

33. Respondents’ and the BIA’s overly broad interpretation of § 1225 departs from the INA’s text, federal precedent, existing regulations, and longstanding agency practice.

34. More than 350 district court decisions have properly rejected Respondents’ interpretation, finding it contravenes the INA. *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, \*4 (S.D.N.Y. Nov. 26, 2025) (noting that the government has been challenged in at least 362 similar cases in federal district court and that 350 of those cases, decided by over 160 judges, have resolved this same issue against the government); *Gomez v. Diaz*, No. 25-62236-CIV, 2026 U.S. Dist. LEXIS 3335, at \*5 (S.D. Fla. Jan. 8, 2026) (Damian,



J.) (agreeing with “the majority of District Courts throughout the country that have analyzed this issue.”).

35. Accordingly, mandatory detention provisions of § 1225(b)(1) or (b)(2) cannot apply to Petitioner because DHS placed him in standard removal proceedings and he was not apprehended at or near the border. He has been present in the United States for over 17 years and cannot be reasonably construed as “seeking admission.”

36. ICE’s recent detention of Petitioner under § 1225 clearly violates the plain text of the INA. And even if Petitioner’s detention were governed by § 1225, which it is not, his detention violates the Due Process Clause because Petitioner was not afforded a hearing or opportunity to demonstrate that he is neither a flight risk or a danger to the community before he was suddenly and arbitrarily detained.

### **CLAIMS FOR RELIEF**

#### **Count I: Detention in Violation of the INA**

37. Petitioner alleges and incorporates by reference the paragraphs above.

38. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

39. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

#### **Count II: Violation of the Bond Regulations**

40. Petitioner alleges and incorporates by reference the paragraphs above.

41. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of Aliens,” the agencies explained that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration judges under 8 U.S.C. § 1226 and its implementing regulations.

42. Nonetheless, pursuant to *Matter of Yajure Hurtado*, Respondents have a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

43. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**Count III: Fifth Amendment Due Process—Arbitrary Civil Detention Without Adequate Process**

44. Petitioner alleges and incorporates by reference the paragraphs above

45. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

46. Petitioner has significant liberty interests protected by the Due Process Clause as a person physically present with established ties to the United States. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020).

47. Petitioner has a fundamental interest in his liberty and being free from official restraint.

48. Petitioner's continued detention without a bond redetermination hearing to determine whether he is a flight risk or a danger to others amounts to a serious deprivation of his constitutional rights and violates the Due Process Clause of the Fifth Amendment.

49. Further, evidence shows that even when district courts order a bond hearing, similarly situated individuals are denied procedural due process because immigration judges have routinely predetermined that individuals like Petitioner are a "danger to the community" or "flight risk" thereby warranting immediate release. *See* Exhibit A.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;  
or
- (4) In the alternative, order Respondents to provide Petitioner with a prompt (within 7 days) individualized bond hearing before a neutral decisionmaker at which the Government bears the burden, by clear and convincing evidence, to prove that Petitioner is a danger or a flight risk, with consideration of less restrictive alternatives to detention;
- (5) Declare that Petitioner's detention under 8 U.S.C. § 1225 is unlawful;
- (6) Enjoin Respondents from re-detaining Petitioner absent a material change in circumstances supported by specific, articulable facts and written findings;
- (7) Issue an Order enjoining the Respondents from transferring Petitioner outside this District during the pendency of these proceedings;
- (8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and



(9) Grant any further relief this Court deems just and proper.

Dated this 16<sup>th</sup> day of March 2026

By: /s/ Alexander Martinez

Alexander Martinez, Esq.

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner Edwin Moises Aguirre Polanco as his attorney. I have discussed with Petitioner the events described in this Petition and have examined all documents referenced herein. On the basis of those discussions and upon my review of those documents, on information and belief, I hereby verify that the factual statements made in the foregoing Verified Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of my knowledge.

Date: March 16, 2026

By: /s/ Alexander Martinez

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